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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

BARRETT, THOMAS C

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NOBUMASA SUZUKI, YUTAKA NOHARA, SHINNOSUKE
NAKAHARA, SHIGENOBU SATO, KAZUMASA UHEYAMA,
KAZUHIRO HASEGAWA, KAZUYA ORIBE and
HIROSHI TAKAMIDO

Appeal 2009-011661
Application 10/659,302
Technology Center 3700

Before LINDA E. HORNER, STEVEN D.A. McCARTHY and
KEN B. BARRETT, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

1 The Appellants appeal the Examiner's final decision rejecting claims
2 1-3 under 35 U.S.C. § 134. More specifically, the Examiner rejects claims
3 1-3 under 35 U.S.C. § 102(b) as being anticipated by Jackson (US
4 6,110,172, issued Aug. 29, 2000). We have jurisdiction over the appeal
5 under 35 U.S.C. § 6(b).

6 We REVERSE.

7 Claims 1 and 3 are independent claims. Claim 1 recites:

8 1. A rod fixing apparatus for a vertebra
9 connecting member connecting separated
10 vertebras, the rod fixing apparatus comprising:

11 a pressure fixing device configured to
12 pressure fix a rod portion to a circular arc rod
13 engagement portion engaging the rod portion; and

14 protruding portions configured to eat into
15 the rod portion in both end sides of the circular arc
16 rod engagement portion outside the pressure fixing
17 device, the protruding portions extending in a
18 direction substantially perpendicular to a
19 longitudinal direction of the vertebra connecting
20 member.

21 Claim 3 recites a rod fixing apparatus including "small projections extending
22 in a direction substantially perpendicular to a longitudinal direction of the
23 rod."

24 Jackson describes a bone screw assembly *1*. The bone screw
25 assembly *1* includes a bone screw *2*, a cap *3* and a set screw *4*. (Jackson,
26 col. 4, ll. 8-9.) The bone screw *2* includes a head *7*. The head *7* has a
27 plurality of ridges *17* formed in a U-shaped channel *10*. The ridges *17*
28 extend from a first face *18* of the head *7* to a second face *19*. The ridges *17*
29 are adapted to engage an outer surface of a spinal rod *15* to secure the spinal
30 rod *15* in the U-shaped channel *10*. (Jackson, col. 4, ll. 10-11 and 21-26.)

1 The Examiner finds that ridges 17 “individually have a width that
2 extends[,]” or the ridges 17 “as a group extend[,]” perpendicular to the
3 longitudinal axis. (Ans. 5.) In other words, each ridge has a width along a
4 direction substantially perpendicular to the longitudinal direction of the
5 vertebra connecting member. Although each ridge 17 also has a length
6 which is greater than the ridge’s width, the ridge in a sense extends some
7 finite distance along its width. Furthermore, the ridges 17 are arrayed next
8 to one another along the width direction. In this sense, the combination of
9 the widths of the group of ridges 17 extends in a direction substantially
10 perpendicular to the longitudinal direction of the vertebra connecting
11 member.

12 The Appellants correctly contend that both rationales depend on
13 unreasonably broad claim interpretations. (Reply Br. 3.) The Specification
14 does not disclose any example in which the width of an elongated projecting
15 portion extends substantially perpendicular to the longitudinal axis of a
16 vertebra connecting member. Instead, substantially all of the examples
17 showing elongated projecting portions appear to show the lengths of the
18 projecting portions extending substantially perpendicularly to the
19 longitudinal axis. (*See, e.g.*, Spec., figs. 2A (ref. num. 15), 2B (*simile*), 4A
20 (ref. num. 29), 4B (*simile*) and 5 (ref. num. 37)). In order for claim 1 to
21 encompass at least one embodiment disclosed in the Specification, one of
22 ordinary skill in the art must understand the term “protruding portions
23 extending in a direction substantially perpendicular to a longitudinal
24 direction” to mean that each protruding portion has a length extending
25 substantially perpendicular to the longitudinal axis. Nothing in the claim
26 language or the Specification implies that one of ordinary skill in the art

1 would have reason to understand the term to also mean the opposite, namely,
2 that each protruding portion has a width extending perpendicular to the
3 longitudinal axis.

4 The Appellants point out that Jackson specifically discloses “the
5 ridges 17 ‘*extend* from a first or front face 18 to a second or rear face 19’.”
6 (Reply Br. 4) (italics in original.) As such “each ridge 17 extends in a
7 direction *parallel* to the longitudinal direction of the spinal rod 15” (Reply
8 Br. 3) (italics in original.)

9 We do not sustain the rejections of claims 1 and 3 under § 102(b) as
10 being anticipated by Jackson. Consequently, we also do not sustain the
11 rejection of dependent claim 2 under § 102(b) as being anticipated by
12 Jackson.

13
14 DECISION

15 We REVERSE the Examiner’s decision rejecting claims 1-3.

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17 REVERSED

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21 Klh

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